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Book Note

INDISPENSABLE COUNSEL: THE CHIEF LEGAL OFFICER IN THE NEW REALITY, by E Norman Veasey and Christine T Di Guglielmo¹

JOSHUA DANIELS

THE REGULATORY ENVIRONMENT in corporate America has changed rapidly since the enactment of the *Sarbanes-Oxley Act of 2002* (SOX)² and has intensified markedly with the recession-driven *Dodd-Frank Wall Street Reform and Consumer Protection Act*,³ signed into US law in mid-2010. These rules have firmly embedded federal law into the depths of corporate governance and, in so doing, have imposed tremendous compliance burdens on corporate decision makers. Among key executives, the chief legal officer (CLO)⁴ is perhaps most impacted by this heightened legislative stringency.

In fact, the CLO's role—although often overlooked in the general public and even within corporate circles—continues to evolve. It has moved well beyond the traditional notion of corporate gatekeeper and into the realm of “lawyer-statesman”⁵—a term that encompasses a multiplicity of corporate roles and demands an ambitious mix of integrity, independence, courage, and technical proficiency. *Indispensable Counsel: The Chief Legal Officer in the New*

1. (New York: Oxford University Press, 2012) 286 pages.

2. Pub L No 107-204, 116 Stat 745 [SOX].

3. Pub L No 111-203, 124 Stat 1376 (2010).

4. The authors use the term “CLO” to refer to what is more commonly known as general counsel or “GC.”

5. *Supra* note 1 at xxvi. This term was popularized by Ben Heineman in a notable paper published by the Harvard Law School Program on the Legal Profession. See Ben W Heineman, *The General Counsel as Lawyer-Statesman*, online: <<http://blogs.law.harvard.edu/corpgov/2010/09/05/the-general-counsel-as-lawyer-statesman/>>.

Reality examines this complex reality thoroughly, although it manages to read as a compact primer for time-pressed professionals. The authors, E Norman Veasey and Christine T Di Guglielmo, draw on their own experiences as corporate counsel,⁶ as well as the opinions and conceptions of several CLOs (past and present) of prominent multi-national corporations, to create a practical handbook aimed at educating and empowering the modern CLO.

The book is divided into seven short chapters, each of which canvasses a different dimension of the CLO's ever-evolving responsibilities. Helpfully, each chapter contains its own "key takeaways" section to distill the often disparate sub-topics discussed. Chapter one examines, at a high level, the myriad tensions and challenges faced by today's CLOs. The authors employ a palpable tone of skepticism in order to highlight the breadth of demands faced by CLOs in corporate America. In particular, the authors briefly engage with the pervasive "best interests of the corporation" debate in order to elucidate the inescapable tensions stemming from the CLO's role as legal advisor to the board, liaison with management, and fiduciary to the corporation (*i.e.*, the client). The authors then provide an overview of the corporate legislative landscape in the US (pre- and post-2008 financial crisis), with a particular focus on regulations that have a discernible impact on CLOs.

Chapter two traces a brief history of the CLO in corporate America—one that embodies a pendulum-like path as it pertains to the CLO's prestige and perceived indispensability. Chapter three is the book's most wide-ranging in content, focusing on the nuances of the CLO's relationship with management and the Board. The authors also discuss CLO engagement with external stakeholders including government officials, investors, and media members. This chapter concludes with an insightful and pragmatic list of best practices for achieving an optimal balance between being a prudent lawyer, persuasive counselor, and effective business strategist—a dynamic that may not appear plausible for many CLOs, but is nonetheless crucial in corporate America today.⁷

Chapter four traverses into the field of professional ethics and describes the significance of the CLO as guardian of the "corporate conscience."⁸ The authors outline several noteworthy rules of professional conduct and conclude

6. Norman Veasey is also a decorated former Chief Justice of Delaware.

7. See also E Norman Veasey & Christine T Di Guglielmo, "The Tensions, Stresses, and Professional Responsibilities of the Lawyer for the Corporation" (2006) 62 Bus Law 1.

8. *Supra* note 1 at 99.

with practical advice on how to promote and monitor ethical conduct within the corporate environment.

Chapter five addresses the practicalities of advising the Board on corporate law matters and other, more specialized practice areas such as employment, intellectual property, and antitrust law. Chapter six recommends effective strategies for the CLO—as administrator of the in-house legal department—for managing both in-house lawyers and any outside counsel retained by the client.

Finally, chapter seven details various liability risks to which the CLO is exposed today, with a special focus on the “reporting up” requirements contained in SOX⁹ and the fiduciary duties owed by the CLO under Delaware law.¹⁰

Together, these chapters cogently summarize the pertinent issues facing CLOs today and, although somewhat axiomatic, should genuinely help the modern CLO “keep the corporate ship afloat and sailing the proper channel”¹¹—an apt analogy for the precarious economic climate in which the CLO operates.

9. *SOX*, *supra* note 2, § 307.

10. *Supra* note 1 at 210-11.

11. *Ibid* at 38.

